

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.618 OF 2016
ALONGWITH
CIVIL APPLICATION NO.789 OF 2016**

Shri. Dilip Ramaraya Bhandarkar

.. Appellant

Versus

Satish Shrikrishna Kamath

.. Respondent

Mr. G. N. Salunke a/w Mr. A. M. Rajgole for the Appellant.

Mr. B. J. Joshi for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 1st AUGUST 2016

PC.

1 The above Appeal from Order takes exception to the order dated 02.05.2016 passed by the Learned Judge of the City Civil Court, Mumbai, by which order, the Notice of Motion No.519 of 2014 filed by the Appellant/original Plaintiff came to be dismissed. The bone of contention is the flat admeasuring 860 sq. ft. (carpet) in the building known as Pushpa Kunj situate at Mori Road, Mahim, Mumbai-400 016. It is an undisputed position that the said flat is in the name of the Plaintiff i.e. the Appellant. The Defendant Shri. Satish Shrikrishna Kamath is the brother-in-law of the Plaintiff. It seems that the Plaintiff went to America in the year 1972 and permitted the Defendant to reside in the suit premises to

take care of his aged parents. However, it is the case of the Defendant i.e. the Respondent herein that the flat belongs to the father of the Plaintiff and therefore the Plaintiff and the Defendant's wife have a share and therefore lays a claim to the said flat on the said basis. The Plaintiff has filed the instant suit for eviction of the Defendant on the ground that he is in permissive possession and the Plaintiff does not desire to continue the Defendant in the said flat.

2 Prior to the instant suit, it seems that the Defendant had filed a suit against the Plaintiff wherein he had filed a Notice of Motion not to dispossess him without following due process of law. The said Notice of Motion as also the Appeal from Order filed therefrom came to be dismissed. In the instant case, the reliefs sought were by way of prayer clauses (a) and (b) which are appropriately mentioned in the Notice of Motion. It is recorded in the impugned order that the Learned Counsel appearing for the Plaintiff does not press prayer clause (a) and presses only prayer clause (b). The Trial Court has rejected the said relief of restraining the Defendant from creating third party rights on the ground that since the Defendant does not have any right, the apprehension of the Plaintiff is misconceived. The Trial Court has also rejected prayer clause (b) on the ground that there is no basis to claim the relief that the Defendant be directed to pay compensation at the rate of Rs.2,00,000/-.

3 In so far as the aspect of third party rights is concerned, the Learned Counsel appearing on behalf of the Respondent i.e. the original Defendant Mr. B. J. Joshi fairly states that the Respondent/Defendant would not create third party rights pending the suit. Statement accepted. In so far as the other relief of claiming compensation from the Defendant is concerned, since the said relief has been rejected on the ground that the application was sans particulars, the Plaintiff would be at liberty to file a fresh application for the said relief by giving particulars etc. on the basis of which he is claiming compensation to the extent that he would claim in the application. If the Plaintiff is aggrieved by the recording made in the impugned order as regards prayer clause (a), it is open for the Plaintiff to file an appropriate application for seeking clarification/correction. However subject to the above, the Appeal from Order is disposed of.

4 Needless to state that if any such applications are filed, the same would be considered by the Trial Court on their own merits and in accordance with law without being influenced by the impugned order or the instant order.

[R.M. SAVANT, J]